

EXHIBIT 1

982.1(20)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): JULIAN J. HUBBARD, ESQ. CSBN 106469 ADRIANA C. MOORE, ESQ. CSBN 146121 McCLOSKEY, HUBBARD, EBERT & MOORE LLP 399 Bradford Street, Suite 102 Redwood City, CA 94063 TELEPHONE NO: (650) 369-9353 FAX NO. (Optional): (650) 369-9351 E-MAIL ADDRESS (Optional): julianjhubbard@aol.com ATTORNEY FOR (Name): ROBERT MONDAVI WINERY SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA STREET ADDRESS: 825 Brown Street MAILING ADDRESS: P.O. Box 4988 CITY AND ZIP CODE: Napa, CA 94559-3031 BRANCH NAME: Historic Courthouse PLAINTIFF: ROBERT MONDAVI WINERY DEFENDANT: BDM CONSTRUCTION COMPANY, INC., RIVER CITY CAULKING AND WATERPROOFING <input checked="" type="checkbox"/> DOES 1 TO 50	FOR COURT USE ONLY <h1 style="margin: 10px 0;">ENDORSED</h1> <p style="font-size: 1.2em; margin: 5px 0;">SEP 14 2004</p> <p>Clerk of the Napa Superior Court By: <u>D. Puffer</u> Deputy</p> <p>CASE MANAGEMENT CONFERENCE DATE: <u>2/22/2005</u> TIME: <u>8:30 AM</u> PLACE: <u>Courtroom B, 2nd Floor</u> <u>825 Brown St., Napa CA 94559</u></p> <p style="font-size: 1.5em; margin-top: 20px;">DELAY REDUCTION CASE</p> <p>CASE NUMBER: 26-26808</p>
<p style="text-align: center;">CONTRACT</p> <p><input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Number):</p> <p><input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):</p> <p>Jurisdiction (check all that apply):</p> <p><input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000</p> <p><input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited</p>	

1. PLAINTIFF* (names): ROBERT MONDAVI WINERY

alleges causes of action against DEFENDANT* (names): BDM CONSTRUCTION COMPANY, INC; RIVER CITY CAULKING AND WATERPROOFING

2. This pleading, including attachments and exhibits, consists of the following number of pages:

3. a. Each plaintiff named above is a competent adult

☒ except plaintiff (name): ROBERT MONDAVI WINERY

- ☒ a corporation qualified to do business in California
☐ an unincorporated entity (describe):
☐ other (specify):

b. ☐ Plaintiff (name):

- ☐ has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):
☐ has complied with all licensing requirements as a licensed (specify):

c. ☐ Information about additional plaintiffs who are not competent adults is shown in Complaint—Attachment 3c.

4. a. Each defendant named above is a natural person

☒ except defendant (name): BDM CONSTRUCTION COMPANY, INC.

- ☐ a business organization, form unknown
☒ a corporation
☐ an unincorporated entity (describe):

☐ a public entity (describe):☐ other (specify):☒ except defendant (name): RIVER CITY CAULKING AND WATERPROOFING

- ☒ a business organization, form unknown
☐ a corporation
☐ an unincorporated entity (describe):

☐ a public entity (describe):☐ other (specify):

SHORT TITLE: MONDAVI v. B

CASE NUMBER:

COMPLAINT—Contract

4. (Continued)

- b. The true names and capacities of defendants sued as Does are unknown to plaintiff.
 c. ☐ Information about additional defendants who are not natural persons is contained in Complaint—Attachment 4c.
 d. ☐ Defendants who are joined pursuant to Code of Civil Procedure section 382 are (names):

5. ☐ Plaintiff is required to comply with a claims statute, and
 a. ☐ plaintiff has complied with applicable claims statutes, or
 b. ☐ plaintiff is excused from complying because (specify):

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

7. This court is the proper court because

- a. ☒ a defendant entered into the contract here.
 b. ☐ a defendant lived here when the contract was entered into.
 c. ☐ a defendant lives here now.
 d. ☒ the contract was to be performed here.
 e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.
 f. ☐ real property that is the subject of this action is located here.
 g. ☐ other (specify):

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- ☒ Breach of Contract ☐ Common Counts
☒ Other (specify): **NEGLIGENT CONSTRUCTION**

9. ☐ Other:

10. **PLAINTIFF PRAYS** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. ☒ damages of: \$ 3,000,000.00
 b. ☒ interest on the damages
 (1) ☒ according to proof
 (2) ☒ at the rate of 10.00 percent per year from (date): August 31, 2003
 c. ☒ attorney fees
 (1) ☐ of: \$ 0.00
 (2) ☒ according to proof.
 d. ☐ other (specify):

11. ☐ The following paragraphs of this pleading are alleged on information and belief (specify paragraph numbers):

Date: August 12, 2004

JULIAN J. HUBBARD, ESQ. CSBN 106469
 (TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

COMPLAINT—Contract

SHORT TITLE: MONDAVI v. BDM

CASE NUMBER:

FIRST

(number)

CAUSE OF ACTION - Breach of Contract

Page 3ATTACHMENT TO ☐ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): ROBERT MONDAVI WINERY

alleges that on or about (date): March 1, 1999

a ☒ written ☐ oral ☐ other (specify):

agreement was made between (name parties to agreement): Plaintiff and BDM CONSTRUCTION COMPANY, INC.

☒ A copy of the agreement is attached as Exhibit A, or☐ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☐ are as follows (specify):

BC-2. On or about (dates): September 2003

defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☒ the following acts (specify): The waterproofing for the construction project known as the Tokalon addition has failed in certain areas causing damage to the interior, ponding, corrosion in steel, and related conditions. BDM has attempted repairs which have failed. Defendant RIVER CITY CAULKING, a subcontractor for BDM, has attempted repairs which have failed.

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement ☐ as stated in Attachment BC-4 ☒ as follows (specify): inter alia, water intrusion, damage to tangible property, loss of use of areas used for wine storage and for tasting, unusable storage areas and bathroom facilities, and loss of income due to loss of use of VIP rooms and tasting areas and corrosion to structural steel.

BC-5. ☒ Plaintiff is entitled to attorney fees by an agreement or a statute ☐ of \$ 0.00 ☒ according to proof.

BC-6. ☒ Other: Plaintiff is entitled to be fully indemnified and protected from all losses of any kind associated with defendants' work, including expert fees and costs.

SHORT TITLE:
MONDAVI v. BDM

CASE NUMBER:

SECOND

(number)

CAUSE OF ACTION - General Negligence

Page 4

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): ROBERT MONDAVI WINERY

alleges that defendant (name): BDM CONSTRUCTION COMPANY, INC. and RIVER CITY
CAULKING AND WATERPROOFING

☒ Does 1 to 50

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff
on (date): or about 2001 and continuing up to within one year of the filing of the complaint
at (place): THE ROBERT MONDAVI WINERY, Oakville, CA

(description of reasons for liability):

negligently constructed, sequenced and installed waterproofing resulting in water infiltration and negligently attempted to repair areas of leakage up to less than one year before the filing of this complaint, all of which has caused continuing and expanding areas of damage to tangible property of others, including, but not limited to custom cabinetry, shelving, flooring, woodwork, walls, tiles and equipment and loss of use of VIP tasting rooms, bathroom facilities and storage areas.

SUMMONS (CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

BDM CONSTRUCTION COMPANY, INC., RIVER CITY CAULKING AND WATERPROOFING

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ROBERT MONDAVI WINERY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

NAPA COUNTY SUPERIOR COURT
825 Brown Street
P.O. Box 4988
Napa, CA 94559-3031
Historic Courthouse

CASE NUMBER: **26-26808**
(Número del Caso)**DELAY REDUCTION CASE**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JULIAN J. HUBBARD, ESQ.
McCLOSKEY, HUBBARD, EBERT & MOORE LLP
399 Bradford Street, Suite 102
Redwood City, CA 94063

(650) 369-9353 (650) 369-9351

DATE:

(Fecha)

Stephen A. Bouch

Clerk, by
(Secretario)Deputy
(Adjunto)

SEP 14 2004
(For proof of service use Proof of Service of Summons (form POS-010)).
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

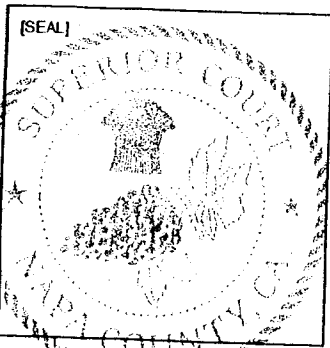
NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): BDM CONSTRUCTION INC.

under: ☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):



NAME AND ADDRESS OF SENDER: ADRIANA C. MOORE (#146121) McCLOSKEY, HUBBARD, EBERT & MOORE, LLP 399 Bradford Street, Suite 102 Redwood City, California 94063		TELEPHONE NO.: 650-369-9353 650-369-9351	For Court Use Only:
Insert name of court, judicial district or branch court, if any, and Post Office and Street Address: SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA 825 Brown Street Napa, California 94559-3031			
PLAINTIFF: ROBERT MONDAVI WINERY			
DEFENDANT: BDM CONSTRUCTION COMPANY, INC., et al.			
NOTICE AND ACKNOWLEDGMENT OF RECEIPT			Case Number: 26-26808

TO: DAVID HENNINGSEN, ESQ. on behalf of BDM CONSTRUCTION COMPANY, INC.
(Insert name of Individual being served)

This summons and other documents(s) indicated below are being served pursuant to Section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it to me within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 415.30 provides that this summons and other document(s) are deemed served on the date you sign the Acknowledgment of Receipt below, if you return this form to me.

Dated: September 28, 2004

(Signature of sender)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of: (To be completed by sender before mailing)

1. ☐ A copy of the summons and of the complaint.
2. ☐ A copy of the summons and of the Petition (Marriage) and:
 - ☐ Blank Confidential Counseling Statement (Marriage)
 - ☐ Order to Show Cause (Marriage)
 - ☐ Blank Responsive Declaration
 - ☐ Blank Financial Declaration
 - ☐ Other: (Specify)

(To be completed by recipient)

Date of receipt:

(Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person)

Date this form is signed:

(Type or print your name and name of entity, if any, on whose behalf this form is signed)

EXHIBIT "A"

Standard Form of Agreement Between Owner and Contractor where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

**AIA Document A111 - 1997
1997 Edition - Electronic Format**

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by The Associated General Contractors of America.

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AGREEMENT made as of the 1st day of March in the year 1999
(In words, indicate day, month and year)

BETWEEN the Owner:

(Name, address and other information)

Robert Mondavi Winery

P.O. Box 106

Oakville, CA 94562

Attn: Glenn Workman

and the Contractor:

(Name, address and other information)

BDM Construction Company Inc.

835 Piner Road

Santa Rosa, CA 95403-2063

Attn: Dave Kincaid

The Project is:

(Name and location)

R. Mondavi Winery

Oakville, CA

The Architect is:

(Name, address and other information)

Backen, Arrigoni & Ross, Inc.

1660 Bush Street

San Francisco, CA 94109

Attn: Guy Chambers

The Owner and Contractor agree as follows.

AIA DOCUMENT A111 - OWNER - CONTRACTOR AGREEMENT - 1997 EDITION - AIA - COPYRIGHT 1997 - THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE N.W., WASHINGTON, D.C. 20006-5292. WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution. This document was electronically produced with permission of the AIA and can be reproduced without violation until the date of expiration as noted below.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Condition Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

Insert A: The Contractor will perform work in phases that are agreeable to the Owner. Each phase shall be performed under an individual contract for accounting, retention, approval and access purposes. This Contract and General Conditions shall apply to each phase. The Contractor shall provide, subject to the Owner's approval: 1) an overall project schedule showing the overall project and its phases and 2) an overall project budget and individual phase budgets.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and other Consultants retained by the Owner and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)
The Owner will issue a Notice to Proceed after the building permit has been issued and site conditions are favorable.

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

4.2 The Contract Time shall be measured from the date of Notice to Proceed, commencement.

4.3 The Contractor shall achieve Substantial Completion of the entire and each phase of the Work not later than the agreed upon number of days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

ARTICLE 5 BASIS FOR PAYMENT**5.1 CONTRACT SUM**

5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

5.1.2 The Contractor's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

A 6% markup for overhead and profit applied, only as authorized by the Owner, or an item to item basis to the cost of all labor, material, equipment (rented & owned) and all subcontractors scopes of work.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 ~~The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed Dollars (\$ subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to exceed shall be paid by the Contractor without reimbursement by the Owner.~~
(Insert specific provisions if the Contractor is to participate in any savings.)

5.2.2 ~~The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner.~~
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

5.2.3 Unit prices, if any, are as follows:—

5.2.4 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

5.2.6 ~~To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.~~

ARTICLE 6 CHANGES IN THE WORK

6.1 Adjustments to the Guaranteed Maximum Price Cost of the Work on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201-1997 excepting method 7.3.6.

6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

6.3 In calculating adjustments to the Cost of the Work ~~Guaranteed Maximum Price~~, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Subparagraph 5.1.2 of this Agreement.

6.4 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and ~~the Guaranteed Maximum Price shall be adjusted accordingly.~~

ARTICLE 7 COSTS TO BE REIMBURSED

7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work and

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approved by the Owner. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7. Less all discounts (for which Owner provides advance funding), rebates, and salvages which shall be taken by the Contractor. Contract agrees to notify Owner in writing of the availability of such discounts in sufficient time so that Owner may timely apply for and receive the same. The Cost of the Work is shown on addendum.

7.2 LABOR COSTS

7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops. Such costs shall not exceed the amount bid by a minimum of three subcontractors for the same scope of work.

7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with the Owner's prior approval.

7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.2.1 through 7.2.3.

7.3 SUBCONTRACT COSTS

7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

7.4.2 Costs of materials described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. In no event shall the total reimbursable contractor rental charges exceed the fair market value less salvage value of the items when first utilized on the job.

7.5.3 Costs of removal of debris from the site.

7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery

charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.5 That portion of the reasonable expenses of the Contractor's on site personnel incurred while traveling in discharge of duties connected with the Work.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

7.6 MISCELLANEOUS COSTS

7.6.1 ~~That portion of insurance and bond premiums that can be directly attributed to this Contract.~~

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Subparagraph 7.7.3.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee, ~~or subject to the Guaranteed Maximum Price.~~ If such royalties, fees and costs are excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

7.6.6 On site Data processing costs related to the Work.

7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor or due to the Contractor's errors, omissions or negligence, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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8.1 The Cost of the Work shall not include:

- 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or office other than the site office, except as specifically provided in Subparagraphs 7.2.2 and 7.2.3 or as may be provided in Article 14.
- 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.
- 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.
- 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- 8.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.5.2.
- 8.1.6 Except as provided in Subparagraph 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
- 8.1.7 Any cost not specifically and expressly described in Article 7.
- 8.1.8 Costs, other than costs included in Change Orders approved by the Owner, not specifically approved by the Owner in accordance with section 5.1.2. that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

- 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.
- 9.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

- 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain a minimum of three bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.
- 10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Owner Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Cost of the Work Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS**12.1 PROGRESS PAYMENTS**

12.1.1 Based upon Applications for Payment submitted to the Owner Architect by the Contractor and ~~Certificates for Payment issued by the Architect~~, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

12.1.3 Provided that an Application for Payment is received by the Owner Architect not later than the 1st day of a month, the Owner shall make payment to the Contractor not later than the 15th day of the same month. If an Application for Payment is received by the Owner Architect after the application date fixed above, payment shall be made by the Owner not later than 15 days after the Owner Architect receives the Application for Payment.

12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Each Application for Payment shall include a Conditional Waiver and Lien Release from the Contractor and every subcontractor and supplier who furnished labor, equipment, materials or services to the project for the period covered by the Application for Payment.

12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Cost of Work ~~Guaranteed Maximum Price~~ among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner Architect may require. This schedule, unless objected to by the Owner Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Cost of the Work ~~Guaranteed Maximum Price~~ allocated to that portion of the Work in the schedule of values.

12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 take that portion of the Cost of the Work ~~Guaranteed Maximum Price~~ properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Cost of the Work ~~Guaranteed Maximum Price~~ allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;

- 2 add that portion of the Cost of the Work ~~Guaranteed Maximum Price~~ properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- 3 add the Contractor's Fee, less retainage of two percent (2 %). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 4 subtract the aggregate of previous payments made by the Owner;
- 5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- 6 subtract amounts, if any, for which the Owner Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10 %). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

12.1.9 In taking action on the Contractor's Applications for Payment, the Owner Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 12.1.4 or other supporting data; that the Owner Architect has made exhaustive or continuous on-site inspections or that the Owner Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

12.2 FINAL PAYMENT

12.2.1 At such time as Owner and Contractor mutually agree that the Work is complete, the Owner will file and have recorded a Notice of Completion. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment and Waiver and Lien Release Upon Final Payment has been issued by the Contractor and approved by the Owner Architect.

12.2.2 The Owner's final payment to the Contractor shall be made ~~no later than~~ 30 days after the recording of the Notice of Completion provided the requirement of section 12.2.1 shall have been complied with. ~~issuance of the Architect's final Certificate for Payment,~~ or as follows:

12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Owner Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Subparagraph 12.2.1 have been met, the Owner Architect will, within seven days after receipt of the written report of the Owner's accountants, either ~~issue to the Owner a final Certificate for Payment with a copy~~ to the Contractor, or notify the Contractor and Owner in

writing of the Owner's Architect's reasons for withholding Payment ~~a certificate as provided in Subparagraph 9.5.1 of the AIA Document A201-1997~~. The time periods stated in this Subparagraph 12.2.3 supersede those stated in Subparagraph 9.4.1 of the AIA Document A201-1997.

12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision, ~~of the Architect~~. Such demand for arbitration shall be made by the Contractor within 30 days after the Owner's written notice of the disputed amount; ~~Contractor's receipt of a copy of the Architect's final Certificate for Payment~~; failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the undisputed amount ~~certified in the Architect's final Certificate for Payment~~.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, ~~but not in excess of the Guaranteed Maximum Price~~. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. ~~However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Paragraph 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

13.2 ~~The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:~~

13.2.1 ~~Take the Cost of the Work incurred by the Contractor to the date of termination;~~

13.2.2 ~~Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~

13.2.3 ~~Subtract the aggregate of previous payments made by the Owner.~~

13.3 ~~The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.~~

13.4 ~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 and Paragraph 6.4 of this Agreement.~~

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

14.2 Payments approved or otherwise determined to be properly due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

1% per Month. 12% APR

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

14.3 The Owner's representative is:

(Name, address and other information.)

Glenn Workman, Project Manager

14.4 The Contractor's representative is:

(Name, address and other information.)

Dave Kincaid, Project Manager

14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

14.6 Other provisions:

The Owner agrees to indemnify BDM and its subcontractors from any claims, costs and liability relating to hazardous substances on the property that are not generated, transported or disposed of by BDM and its subcontractors.

The Contractor shall cooperate with the Owner in order to make portions of the Work available for use and occupancy prior to completion.

If either party commences an action against the other to enforce any of the terms hereof, the losing or defaulting party shall pay to the prevailing party the costs and expenses incurred in connection with the prosecution or defense of such action, including accountant's fees and reasonable attorneys fees.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages
----------	-------	-------

15.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 15.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section
NONE

Title

Pages

15.1.5 The Drawings are as follows, and are dated _____ unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number

Title

Date

TO BE LISTED

15.1.6 The Addenda, if any, are as follows:

Number

Date

Pages

1 Approved Budget, overall
2 Approved Budget, per phase
3 Schedule
4 Scope of Phases

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

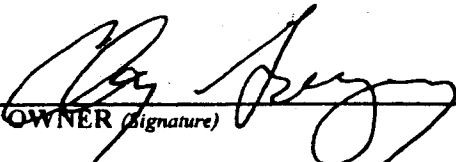
15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

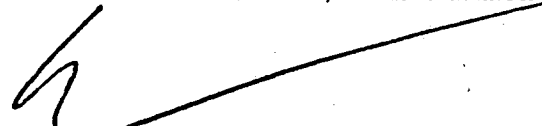
(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.


 OWNER (Signature)
Clay Gregory, Vice President
 (Printed name and title)


 CONTRACTOR (Signature)
Glenn R. McClish, President
 (Printed name and title)

General Conditions of the Contract for Construction

AIA Document A201 - 1997
1997 Edition - Electronic Format

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

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ARTICLE 1 GENERAL PROVISIONS**1.1 BASIC DEFINITIONS****1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Project Manuals, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations or by Subcontractors, material suppliers or any other entity for whom the Contractor is responsible whether on or off the site of the Project. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results given the Contractor's extensive experience and expertise with the construction of projects of the size and type of the Project.

1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

Insert A: If there is any inconsistency in the Drawings, or between the Drawings and the Specifications, unless otherwise ordered in writing by the Architect or Owner, the Contractor shall provide the better quality of, or the greater quantity of, work or materials.

Insert B: Conflicts or discrepancy among the Contract Documents shall be resolved in the following order of priority:

a) The Agreement

b) Amendments and revisions of later date take precedence over those of earlier date.

c) The Supplemental General Conditions

d) The General Conditions

e) Drawings and Specifications: Drawings govern Specifications for quantity and location, and Specifications govern Drawings for quality and performance. In the event of ambiguity, the greater quantity and the better quality shall govern.

f) Figured dimensions govern scale dimensions and larger scale Drawings govern smaller scale.

g) Drawings, and

g) Submittals.

1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.4 INTERPRETATION

1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are the Owner's property Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and the Owner will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Owner Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's and Owner's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's and Owner's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's and Owner's consultants, appropriate to and for use in the execution of their Work under the Contract Documents. All copies made